IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 604 of 2003
with
Civil Application No.1635 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE A.L.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT STATE ROAD TRANSPORT CORP. - Appellant(s)

Versus

INDRAJIT BALVANTSINH PARMAR - Defendant(s)

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Appearance :
MR HARDIK C RAWAL for Petitioner No(s).: 1.
MR MANISH R RAVAL for Respondent No(s).: 1.
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CORAM : HONOURABLE MR.JUSTICE A.L.DAVE

Date : 25/08/2005

ORAL JUDGMENT

1. This is an appeal to challenge the judgment and award of learned W.C.Commissioner at Junagadh in W.C. (N.F.) No.62 of 1997, awarding compensation to the respondent of an amount of Rs.93,500/- with a penalty of

50% of the said amount with interest @ 9% on the amount.

2. The said claim application was preferred by present respondent on account of accidental injuries sustained by him in a vehicular accident that occurred on 26th October,2004, while the respondent was driving S.T.Bus No.GJ-1-Z-4043 on Ahmedabad – Mangrol route. As a result of accidental injuries, the right leg of the respondent was required to be amputated. He also sustained fracture in the left leg. He, therefore, preferred the said claim application before learned W.C.Commissioner for an amount of Rs.1 lakh as compensation with penalty of 50% and interest @ 18%.

3. The appellant – original opponent is aggrieved by the judgment and award mainly by award of 50% penalty and hence, this appeal.

4. Learned Advocate Mr.Hardic C. Raval appearing for the appellant has empathetically put forward the case of the appellant and submitted that the respondent had preferred Motor Accident Claim case before M.A.C.Tribunal, Gondal bearing No.493 of 1994. The respondent had also preferred the present claim before learned W.C.Commissioner and, therefore, learned

W.C.Commissioner was not justified in awarding penalty at 50% which is the highest penalty awardable. Mr.Hardic C. Raval, however, could not assail the award on quantum aspect with same force.

5. Learned Advocate Mr.Manish R. Raval for the respondent submitted that the award of penalty is provided in Section 4(A) of the Workmen's Compensation Act,1923 and if the language of the Section is seen, there is hardly any discretion left with the learned W.C.Commissioner not to award penalty where there is fault in paying the compensation within one month from the date it fell due. Once the delay is indicated and it is not justified, the W.C.Commissioner is bound to award penalty. Mr.Manish R. Raval, learned Advocate, also submitted that percentage of penalty is a discretion of the learned W.C.Commissioner and there is nothing to show that the discretion is not used judicially. Mr.Manish R. Raval submitted that if element of arbitrariness is absent, this Court may not interfere with judicial discretion used by learned W.C.Commissioner.

5.1 Mr.Manish R. Raval submitted that apart from this aspect, factually the awarded amount has been deposited

by the appellant before the learned W.C.Commissioner and it has been disbursed to the respondent in January,2003 and as such, the appeal is nothing but an academic exercise. He, therefore, submitted that the appeal may be dismissed.

6. This Court has taken into consideration rival side contentions. The judgment of the learned W.C.Commissioner makes it clear that while computing the quantum of compensation, all relevant aspects have been taken into consideration and there appears not any reason whatsoever to interfere with those findings. Even learned Advocate for the appellant also was unable to assail the quantum part of award.

7. So far as the imposition of penalty @ 50% is concerned, learned W.C.Commissioner has considered the case of rival sides including the case of the appellant that since the applicant had preferred application for compensation before the M.A.C.Tribunal, Gondal, he cannot claim penalty and came to a conclusion that the appellant failed to justify non-deposit of amount of compensation within one month from the date it fell due. There is no reason to take a different view of the matter for the reason that on record also, there is nothing to show,

even an attempt on part of the appellant – original opponent to justify the delay in paying compensation.

8. Apart from this, independent of what is observed by the learned W.C.Commissioner, certain relevant dates would be sufficient to come to a conclusion that there is justification for award of penalty @ 50%.

9. The accident occurred on 26th October,1994. The respondent was the driver of the appellant – Corporation. Knowledge on part of the appellant – Corporation, therefore, can be legitimately inferred. The amount of compensation became due from the date of accident itself because it is a case of amputation of leg of the driver. The appellant did not deposit the amount of compensation with the learned W.C.Commissioner within a month therefrom. The claimant preferred a claim application before the M.A.C.Tribunal, Gondal in the year 1994 itself i.e. within two months from the date of accident. It is not known as to when the appellant – Corporation was served with summons in that matter but, fact remains that Corporation has not filed any written statement in that matter.

9.1 In the year 1997, the claim before the learned

W.C.Commissioner was preferred and therein, written statement came to be filed by the appellant taking a contention regarding pendency of M.A.C.Petition. As a result, the said M.A.C.Petition came to be withdrawn on 14th June,2001. Despite that written statement, the appellant failed to deposit the amount of compensation with the learned W.C.Commissioner till disposal of the claim application before the learned W.C.Commissioner on 25th October,2001 and even thereafter, the amount is deposited on 17th September,2002 i.e. nearly after 10 months from the date of award.

10. The above sequence of events would clearly indicate that the appellant, though aware about the accident, did not deposit the compensation amount within one month from date of accident or within one month from the date of summons from the Court of learned W.C.Commissioner or within one month from date of filing of written statement before the learned W.C.Commissioner or within one month from the date of award. The corporation is aided by legal advisors and cannot take a plea of being unaware about the provisions of law. The claimant filing M.A.C.Petition cannot be a ground for the appellant not fulfilling the liability under the Workmen's Compensation Act. The situation worsens when after filing of W.C.Application

and summons being served also to appellant employer failed to deposit the amount of compensation within stipulated period.

10.2 Thus there is gross neglect on part of the appellant - Corporation in depositing the amount of compensation and, therefore, would attract Section 4(A) of the Workmen's Compensation Act with full force. The appeal, therefore, has no merits and must fail.

11. Additionally, it would be worth a note that the amount of compensation has been deposited by the appellant – Corporation and has been disbursed to the respondent by learned W.C.Commissioner. Learned Advocate for the appellant – Corporation appearing in the matter before the learned W.C.Commissioner has put an endorsement of “no objection” and thereafter, the amount is disbursed by the learned W.C.Commissioner and as such, this appeal is virtually infructuous, except that it may entail an academic exercise. But that also having been undertaken by this Court in the earlier paragraphs and having found no merits in the appeal, the appeal must fail. Appeal stands dismissed. The award is confirmed. No costs. Notice discharged.

12. In view of the order passed in main appeal, the Civil Application No.1635 of 2003 does not survive and same stands disposed of accordingly.

(A.L.DAVE,J.)

(vipul)